



U.S. Department of Justice

Environment and Natural Resources Division

NBC

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VIA ELECTRONIC MAIL

September 22, 2017

Gary Baise
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Counsel for City of Jeffersonville

Re: *U.S. and State of Indiana v. City of Jeffersonville*
Request to Amend LTCP and Modify Consent Decree

Dear Counsel,

I write on behalf of U.S. EPA and IDEM, following our September 7 meeting in Indianapolis where we discussed the City of Jeffersonville's forthcoming proposal for a modification of the City's current approved Long Term Control Plan (LTCP) to address Combined Sewer Overflows (CSOs). This letter provides some initial feedback from the agencies regarding the outline of Jeffersonville's proposal presented on September 7, and also poses a number of questions that should be addressed in the more formal submittal that Jeffersonville indicated it would provide on October 6. To the extent the agencies misunderstand Jeffersonville's proposal outline presented on September 7, please provide any necessary clarification in your October 6 response.

As an initial matter, we understand based on the information Jeffersonville presented and provided in the City's one-page handout from September 7 (attached here) that Jeffersonville's October 6 proposal will be structured as follows: Jeffersonville seeks to modify the LTCP that was approved by the agencies on May 20, 2011 in order to (1) narrow the planned Phase III CSO interceptor from its originally approved design diameter of 84" to a smaller 60" tunnel; and (2) offset the reduced wastewater storage capacity of the smaller tunnel during wet weather events by installing a new high rate treatment (HRT) clarifier at the downtown wastewater treatment plant.¹ Jeffersonville estimates that these two measures will result in a projected capital cost savings to the City of \$

Exs. 4 and 7A

¹ City of Jeffersonville handout from 9/7/17 meeting in Indianapolis

² Id.

Based on the limited information presented on September 7, these proposed changes would significantly affect the environmental benefits that the approved LTCP seeks to achieve. The current LTCP as approved by the agencies is set to achieve a level of control that is consistent with the EPA CSO Control Policy and allows for no more than one (1) overflow to the Ohio River in a typical year, and no more than three (3) overflows to the Cane Run tributary in a typical year. As outlined by Jeffersonville, the proposed amendment would lead to a level of control that allows eleven (11) overflows to the Ohio River and seven (7) overflows to Cane Run in a typical year. Jeffersonville also noted that the estimated volume of wastewater discharge would change under this new proposal, with an increase of 300,000 gallons of wastewater discharged annually to the Ohio River, and a decrease of four million gallons with respect to Cane Run.³

Notably, Jeffersonville's September 7 outline differs substantially from the City's earlier discussions of potential LTCP modifications, first in the City's letter submitted to EPA and IDEM in the fall of 2016, and then followed by the City's May 24, 2017 letter and the meeting held at EPA headquarters on August 2, 2017. In the City's initial 2016 letter (and again in the 2017 letter), the City argued that increasing project costs and the added burden of meeting a new more stringent phosphorus limit necessitated a longer (25-year) implementation schedule, with all LTCP projects to be completed by 2035 (rather than 2025 as contemplated in Paragraph 25 of the Consent Decree).

At the August 2 meeting, however, Jeffersonville argued that a schedule extension was not necessary (and due to certain debt obligations that will be with the City until 2032, would in fact not achieve the goal of making the LTCP more affordable). Rather, the City argued that the LTCP should be amended to reduce the size of the 84" Phase III interceptor to either 60" or 72", with the expected level of control adjusted accordingly (four overflows to the Ohio River and eight to Cane Run in the case of the 60" tunnel, or three overflows to the Ohio and five to Cane Run in the case of the 72")⁴. Given approval for this single modification, Jeffersonville stated that the existing 15-year implementation schedule could still be met, Jeffersonville could continue to move forward on its plan to meet the more stringent phosphorus limit, and in fact the City could meet a level of phosphorus control that is an order of magnitude more stringent than what is required (0.1mg as opposed to the required 1.0mg).

The newest proposal that Jeffersonville discussed on September 7 departs from what we understood to be the outline presented on August 2, and suggests an LTCP that significantly relaxes the expected level of overflow control beyond the levels that Jeffersonville discussed on August 2. It is not clear why the City's latest proposal for a 60" interceptor allows for 11 overflows to the Ohio River,⁵ whereas the City's letter from May 24 suggests that the City is (or was) willing to commit to a 60" interceptor that could be made to achieve four overflows. Additionally, it appears, based on our discussion in Indianapolis, that the City's forthcoming proposal will only meet the phosphorus limit of 1.0 mg, rather than the more stringent 0.1 mg level that the City cited as a basis for relaxing the level of control originally required by the approved LTCP. More fundamentally, Jeffersonville must make the case for why the City's

³ Id.

⁴ These projections on the number of overflows in a typical year are drawn from page 5 of Jeffersonville's May 24 letter. The agencies have not evaluated any formal proposed LTCP amendment that would achieve these results.

⁵ City of Jeffersonville handout from 9/7/17 meeting in Indianapolis

financial circumstances have changed since the current LTCP was approved. The presentations from the City thus far has not provided the agencies with sufficient information to determine how the proposed amended LTCP discussed on September 7 would relieve the financial burden on the City while accomplishing the environmental benefits required under the Consent Decree.

Given these concerns, the agencies are skeptical that a plan can be approved along the lines that Jeffersonville suggested on September 7 with such a dramatic increase in the number of untreated overflows to the Ohio River and Cane Run in a typical year. Moreover, an LTCP that allows for a dramatic increase in the number of overflows to the Ohio River and Cane Run would be particularly troublesome in a case such as this, where the City and the agencies have already agreed on an LTCP that achieves a substantially better environmental result, the parties are already under a court-approved Consent Decree governing the LTCP review and approval process, and the financial necessity for a changed LTCP is not immediately apparent given the relatively modest cost savings and shifting proposals put forth by the City.

Nevertheless, the agencies look forward to reviewing Jeffersonville's forthcoming October 6 submittal in detail and are eager to discuss a path forward for modifying the approved LTCP in a way that is consistent with the CSO Policy and achieves lasting environmental benefits for the Jeffersonville community. Any such modification would need to be in accordance with the Section XXI of the Consent Decree. In order to further guide the discussion, the agencies offer the following preliminary questions and topic areas that should be addressed in Jeffersonville's submittal:

1. Please provide a detailed explanation of why and how the City's financial circumstances have changed between the time the LTCP was approved and the present. Include a detailed explanation why, from the City's perspective, the approved LTCP (on the current approved construction schedule) may no longer be affordable for the City given current circumstances. Please include the financial analysis that underlies the City's conclusion.

2. Please provide an estimate of the current Residential Indicator consistent with EPA's 1997 CSO Financial Capability Guidance (Cost per Household (CPH) divided by Median Household Income) for the approved LTCP on the current approved construction schedule. Provide the basis for the calculations.

3. Please explain what user rates were at the time the Consent Decree was entered, rate increases since (amount and timing of each increase), and projected future rate increases (amount and timing of each increase) necessary in order to complete the approved LTCP on the current approved schedule.

4. Regarding Jeffersonville's new proposal to be submitted on October 6, please answer the following:

- a. What is the total projected cost to comply with each aspect/project of the proposed amended LTCP?

- b. What is the CPH for Jeffersonville's new proposal, and how is this number calculated?
 - c. What are the projected repair and replacement costs associated with Jeffersonville's proposed amended LTCP? What is the contemplated replacement schedule?
 - d. Is the City requesting that storm water costs be considered? If so what are those projected costs and how does Jeffersonville intend for the Consent Decree to memorialize these commitments?
 - e. Explain which individual projects may need state revolving funds, and on what schedule the projects must be bid. What are the costs of these projects? Specify which costs are associated with the LTCP and which are not.
 - f. Jeffersonville's proposed plan increases the number of CSO activations to Cane Run. The Town of Clarksville has expressed concern about CSOs to Cane Run. What is Jeffersonville's plan to address Clarksville's concerns?
5. Provide a cost and benefit analysis for all other engineering alternatives Jeffersonville considered before proposing the forthcoming plan. For example, has Jeffersonville modeled a solution that achieves CSO activations into the Ohio River that fall within the following ranges: (a) 1 to 3 overflows; (b) 4 to 6 overflows; and (c) 7 to 9 overflows? What are the associated costs and benefits for any proposals that Jeffersonville has considered that achieves these activation levels? How do these alternatives compare to the plan selected under Jeffersonville's currently approved LTCP and the new plan that Jeffersonville wishes to adopt now? Provide Jeffersonville's basis for selecting the proposed plan.
6. With respect to the proposed alternative, what are the overflow impacts and environmental benefits?
7. What are the costs and benefits associated with using high rate treatment at the downtown treatment plant? What are the costs and benefits associated with using biologically enhanced high rate treatment at the downtown treatment plant?

The agencies want to reiterate that we remain ready to work with Jeffersonville to modify the approved LTCP (and are open to the possibilities of adjusting implementation schedules and/or levels of overflow control) if a compelling financial need can be demonstrated and there are ways to achieve comparable or greater environmental benefit at a reduced cost. Additionally, we look forward to continuing this discussion in Jeffersonville as part of a plant tour, and would like to set a date soon so that we can plan this visit. Provided that Jeffersonville is still on track to make its planned submittal on October 6, we are open to a meeting in

Jeffersonville sometime during the week of October 23. Please let us know at your convenience what date or dates might work best.

Kind regards,

s/Nigel B. Cooney

Trial Attorney

CC: Terence Branigan, EPA Region V
Morgan Rog, EPA OECA
Beth Admire, IDEM

CSO Interceptor

Outfall(s)	As Designed	Historically	Proposed
Ohio River	1 CSO every 6 month 2.7 MG	52 CSOs 118 MG	11 CSOs 3.0 MG
Cane Run	3 CSOs 14 MG	35 CSOs 21 MG	7 CSOs 10 MG
Total	3 16.7 MG \$	52 (OR) 35 (CR) CSOs 139 MG	11 (OR) 7 (CR) 13 MG \$

Exs. 4 and 7A

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Reduction in CSO Volume between Historic and Proposed

Ohio River = Events goes from 52 to 11 = 79% Reduction
Volume goes from 118 MG to 3 MG = ~97.5% Reduction

Cane Run = Events goes from 35 to 7 = ~80% Reduction
Volume goes from 21 to 10 = ~52.4% Reduction

Cost: As designed
Proposed ~\$

Exs. 4 and 7A